



## WISCONSIN SUPREME COURT CALENDAR

October 7, 2002

1:45 p.m.

01-0231 Renee Van Cleve et al. v. City of Marinette et al.

*This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a ruling of the Marinette County Circuit Court, Judge Tim A. Duket presiding.*

In this case, the Wisconsin Supreme Court will decide what effect a Pierringer<sup>1</sup> agreement with a settling defendant has on enforcement of a judgment against a non-settling party when the non-settling party is a governmental body.

A Pierringer agreement is an agreement under which a plaintiff releases one defendant from liability but reserves the right to proceed against the remaining defendants. Under this type of release, the plaintiff accepts an amount in settlement and agrees to reduce his/her claim against the non-settling defendants by the amount that the settling party has paid.

Here is the background: in August 1998, Renee Van Cleve injured her right knee when she fell into a trench adjacent to a newly installed cement curb in the City of Marinette. She reached an agreement with Ken Keller, doing business as Keller Cement Contractors, which had installed the curb. Keller paid Van Cleve \$7,500 in exchange for a full Pierringer release. The release specified that Van Cleve was not waiving any potential claims against the city. Van Cleve, Keller, and the City of Marinette all signed this agreement and the circuit court approved it.

Van Cleve's case then went to trial, and the jury apportioned liability for the causing the injuries as follows:

- City of Marinette: 90 percent
- Keller: nine percent
- Van Cleve: one percent

The jury awarded Van Cleve \$15,000 in for past non-economic damages and \$60,000 for future non-economic damages (non-economic damages are for items such as pain and suffering, loss of companionship – things that are not easily assigned values. Economic damages are for items such as medical expenses). Following the jury trial, the city filed a motion to dismiss itself and its insurer from the lawsuit on the ground that no judgment could be enforced against it since Keller had been released from the suit. The city based this argument upon its interpretation of a Wisconsin law<sup>2</sup> that says when injuries are caused by the negligence of a municipality and another entity (such as a contractor) the other entity is automatically primarily liable. Because Van Cleve failed to

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<sup>1</sup> Pierringer v. Hoger, 21 Wis. 2d 182, 124 N.W.2d 106 (1963)

<sup>2</sup> Wis. Stats. § 81.17

obtain a judgment against Keller, the city argued, she could not recover against the city. The circuit court denied this motion.

On appeal, however, the city won. The Court of Appeals rejected Van Cleve's argument that the city should be held primarily responsible for its 90 percent portion of the negligence. Van Cleve had argued that, by failing to object to the Pierringer release, the city had, in fact, waived its right to shield itself from liability under this statute but the Court of Appeals disagreed.

The Supreme Court will decide how this state statute that limits a municipality to secondary liability interacts with Pierringer releases.